Editor's note: 87 I.D. 143

MANTLE RANCH CORP.

IBLA 79-399 Decided April 11, 1980

Appeal from denial of an application to reform and amend homestead patent number 1052943 (D-041587).

Reversed.

1. Conveyances: Generally -- Federal Land Policy and Management Act of 1976: Conveyances

   Where evidence is persuasive that certain land was included in a homestead patent as the consequence of an error in description, and other land was settled, improved and occupied for several decades thereafter, an application to reform the patent will be allowed where the concerned administrative agencies do not object, the Government's interests are not unduly prejudiced, no third party's rights are affected, and substantial equities of the applicant will thereby be preserved.

APPEARANCES: James D. Robinson, Esq., Meeker, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

An historical narrative of the background events leading to this appeal is necessary to a proper perspective of the case.

The record indicates that Charles T. Mantle, born in 1898, was reared in the vicinity of the subject land. Upon being discharged from the army following World War I, Mantle settled on remote, isolated, and rugged public land in the canyon along the Yampa (or "Bear") River in the spring of 1919. He made extensive improvements, including a house, barn, corrals, fences, a 1,200-foot irrigation ditch, sheds, a storage cellar, and planted a field with sweet clover and alfalfa, plus a truck garden and an orchard of 48 fruit trees. His principal operation apparently was cattle, as he was then running between 200 and 300 head. He married in 1926 and several children were born of the marriage. The family resided on the land to the exclusion of a home elsewhere.

It was not until April 1929, 10 years after he settled the land, that Charles Mantle made application for a homestead entry pursuant to the Act of September 5, 1914. 1/ His application described the land

1/ This was the statute providing for allowance of second homestead entries (38 Stat. 712). Mantle had originally made application for other land which he never improved or resided upon.

as follows: "S 1/2 NE 1/4, E 1/2 NW 1/4, Sec. 18, T. 6 N, R. 102 W., 6th Principal Meridian."

This land, as well as other adjoining lands, had been included within a powersite withdrawal dated August 2, 1919. However, upon Mantle's submission of proof that his settlement and occupancy predated the withdrawal, the Assistant Commissioner, General Land Office, ruled that his entry would be allowed without reservation under section 24 of the Federal Water Power Act, 41 Stat. 1063, 1075.

Inasmuch as Mantle had made compliance with the requirements of the Homestead Act and was an honorably discharged veteran of World War I, he was entitled to make a commutated (early) final proof of performance. Accordingly, in September 1930, an inspection of the entry was conducted by Edward Doyle, Examiner, General Land Office. Reference will be made later to certain details of Doyle's report. However, the tenor of the report was most favorable to the applicant, and concluded with Doyle's recommendation that the application be allowed. Mantle filed his final proof on August 31, 1931, and on January 26, 1932, a patent was issued to Mantle for the lands described in his homestead application, supra.

In 1937 Mantle began construction of a new home in the SW 1/4 NW 1/4 of sec. 17. The house was completed about 2 years later. It remains in good condition today and is still used by his son's family. Lands adjoining the house on three sides are under cultivation,

and have been since the 1930's. Other improvements in this subdivision include an irrigation ditch, a fenced vegetable garden, a road to the house, also fenced, and a 4-strand barbed wire fence parallel to the river and extending into the SW 1/4 NW 1/4 of sec. 17. (The irrigation ditch and the river fence both originate on patented land in the S 1/2 NE 1/4 of sec. 18 and extend into the SW 1/4 NW 1/4 of sec. 17.)

Another 40-acre subdivision not described in the patent is the NW 1/4 SE 1/4 of sec. 18. This land is moderately sloping to extremely steep and inaccessible. At least 30 acres are suitable for grazing, and have been used for this purpose for many years past. The only improvement on this subdivision is a jeep road of sufficient prominence to be depicted on a modern topographic map of the area.

On August 5, 1938, all of the unpatented land in the vicinity was included within the expanded area of the Dinosaur National Monument, under the administration of the National Park Service. The earlier powersite withdrawal was revoked.

On May 28, 1965, almost exactly 46 years after his original settlement of the land, and some 33 years after issuance of the patent, Charles Mantle filed application with the Colorado State Office of the Bureau of Land Management to amend his patent. He asserted that he had only recently discovered that his patent did not include the

SW 1/4 NW 1/4 of sec. 17, where his home and much of his cultivation and other improvements are situated, nor the NW 1/4 SE 1/4 of sec. 18, which he has used for grazing and where the jeep road is. Instead, he discovered that the patent describes 80 acres in the E 1/2 NW 1/4 of sec. 18, the greater portions of which is sheer or steep sandstone cliffs on the opposite side of the river from the improved portion of the ranch, and which is virtually inaccessible and unusable for any purpose associated with the ranch. In his application Mantle stated that at the time he filed his homestead application in 1929, he had a surveyor complete the papers for him, and he surmised that the surveyor used an old map which did not have the Yampa River properly located. Therefore, he proposed to relinquish the 80 acres of cliffs north of the river and asked that his patent be amended to include the two 40-acre tracts which are contiguous to the 80 acres correctly described in the patent.

In 1968 Charles T. Mantle conveyed the ranch to his children. In 1969, while camped out in the mountains of Mexico, he was reportedly murdered by bandits at his campsite. The application to reform the patent was refiled by Patrick Mantle, administrator of his father's estate. The ranch was incorporated as a family corporation.

In September 1972, BLM Realty Specialist Lyle T. Fox made a field examination of both the patented and unpatented lands involved in the Mantle application. His report, together with the photographs

attached as exhibits provide a most graphic description of his findings and conclusions. Some excerpts from his report follow:

> The E 1/2 NW 1/4 of Section 18, which was also patented to Mantle, contains no improvements nor does it show evidence of clearing or cultivation. Because of steep, rugged topography, access from below is impossible and it is doubtful that livestock could have grazed the portion next to the river. Exhibit "B" shows the tract and the black line represents the southern boundaries.
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> The two 40 acre tracts that Mantle claimed he intended to include in his homestead are both more physically suited for homesteading than the E 1/2 NW 1/4 (Exhibit "B") that he included supposedly by mistake. The NW 1/4 SE 1/4 of Section 18 is moderately sloping, to extremely steep and inaccessible from the canyon below. At least 30 acres of the tract are suitable for grazing and have been used for this in the past; however, they have not been cultivated and whether they could be is questionable. Since there were no fences found on the tract, nor evidence of fences, it appears that livestock have grazed these slopes and others further downstream in past years. Besides a jeep trail, no other improvements were found on the tract. From the standpoint of utility, this tract fits the topography better than any portion of the E 1/2 NW 1/4 to form a better ranch operation with the S 1/2 NE 1/4. Refer to Exhibit "C" for a photo of that portion of the NW 1/4 SE 1/4 of Section 18 that is accessible from below.
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> The SW 1/4 NW 1/4 of Section 17 is the tract containing the most valuable improvements. Although the house is not the original that was built by Mantle and identified in Doyle's report, it has been there for approximately 36 years. According to Evelyn Mantle, who is the wife of the deceased applicant Charles Mantle, construction of the house began in 1937 and it was completed about 2 years later. It remains in good shape and is lived in during the spring, summer, and fall months. There is also an old log shed behind the house that appears to be older, but its exact age is unknown.
>
> In conclusion, it appears quite obvious from the field examination that Mr. Mantle partially received patent to lands that were not physically suitable for

> homesteading. It also seems obvious that his original intentions were to include those lands along the river in the SW 1/4 NW 1/4 of Section 17. His intentions concerning the NW 1/4 SE 1/4 of Section 18 are not quite so clear. However, as mentioned earlier, it definitely has more utility than any portion of the E 1/2 NW 1/4.
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> It should be further noted that after examining the area, it is easy to understand how a person could confuse the "lay of the land", especially if he was relying on the survey plat dated February 28, 1882, or the plat dated March 30, 1928. Both of these lack the necessary topographic features to show the true land picture. Even knowing the location of the 1/4 corner between Sections 17 and 18, a person would be somewhat at the mercy of a land surveyor if he told you where your property line was. Because of the extremely rugged terrain along this section line, for a layman it would be a pure guess to identify its true location. Admittedly, it is rather difficult to understand how one could be off an eighth mile east of the line in a north-south distance of 1/4 mile; however, it is not impossible.

Exhibit "B," referred to in the report, is a color photograph of the E 1/2 NW 1/4 sec. 18, and it depicts a huge, monolithic, sandstone block which rises vertically from the valley floor on the opposite side of the river from the improved land. It is virtually devoid of vegetation and appears to be so steep across its front elevation as to be insurmountable even by a mountain goat. It occupies the entire subdivision except for a small "apron" of relatively flat land lying between the outward-curving river bank and the base of the cliff.

Because the unpatented land surrounding the ranch had been included in the Dinosaur National Monument, BLM next made inquiry of the superintendent of the monument, which is under the National Park Service (NPS), also an agency of this Department. The superintendent responded in part:

> My problem was not being familiar with either the land situation or authority to amend the patent. Now that these are clear, we can see no reason for our disapproving the request of Mr. Mantle for the amendment.
>
> I can truthfully say that the Service is not happy with the amendment, but in all honesty, we are quite certain that the original claim by Charles Mantle was in error, and we must honor the action by your office and Mr. Mantle.

The Rocky Mountain Regional Director, NPS, deferred comment until he could be provided with an opinion by the Office of the Regional Solicitor. Such an opinion was provided, and although it is not in the record before us now, it was obviously supportive of the application. An excerpt from a letter dated December 12, 1974, from the Deputy Regional Director, NPS, to Tim Mantle follows:

> Our Regional Office recently received word of a pending application to amend the patent granted on your property at Dinosaur National Monument in 1932. Our land acquisition personnel have examined the records in the matter and discussed the application with the Bureau of Land Management and with the Regional Solicitor's office.
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> Based on the facts of record, we believe the evidence indicates that an error was made at the time the original legal description was written. With this letter we would like to advise you that we have no objections to the request for amendment being approved as submitted, and in fact we are willing to do whatever we can to actually get the amendment approved. Our Division of Land Acquisition will continue to work with the technical experts in the Bureau of Land Management handling the application in the hope that the correction can be quickly entered, and the Superintendent and his staff will be available as needed.

At the same time, the Acting Regional Director, NPS, wrote the State Director, BLM, the following: "We recently received the opinion

of the Regional Solicitor in Denver referred to in our October 24, 1974, memorandum. Based on this opinion and our examination of the facts of the case, we have no objection to your proceeding to process the claim and approve it as submitted."

As, at this point, BLM, NPS, and the Regional Solicitor's office had all expressed approval of the amendment, BLM's next step was to call upon the applicant to execute and deliver an unrecorded warranty deed conveying title to the United States to the E 1/2 NW 1/4 of sec. 18. The deed was submitted to BLM, accepted, and returned to the applicant's attorney for recordation, together with a request that BLM be provided with (1) an abstract of title or a title insurance policy; (2) receipts evincing payment of all taxes for the subject lands; (3) a certified copy of Charles Mantle's death certificate and a release of the inheritance tax lien on his estate; and (4) a copy of a corporate resolution of the Mantle Ranch Corporation, authorizing the transaction.

The deed was recorded and the foregoing supporting documents were furnished BLM. They were then transmitted to the Regional Solicitor's office, together with the case file, for "review by your office of the conveyance and title documents submitted to us by the applicant." Although the Regional Solicitor was not asked to advise on the legal viability of the application, having already approved it, nevertheless that office responded with the following memorandum opinion to BLM's State Director:

> While it appears that Charles Mantle may have misdescribed, in his Application, the land he intended to enter and that the present amendment may properly describe his intention, the amendment cannot be approved. The land covered by the present application was withdrawn from entry by Power Site Reserve No. 721 as of June 27, 1919. This withdrawal was construed by Power Site Interpretation No. 120 on June 29, 1928. While the withdrawal was revoked on July 8, 1974, all the land in Sections 17 and 18 were withdrawn for Dinosaur National Monument by the Act of September 8, 1960. Therefore, the land applied for in the subject application cannot be patented to the applicant, because it is neither presently available for entry nor was it available for entry in 1932 when the original patent was issued. Frank H. and Claire E. Stefflre, 3 IBLA 255 (1971).

Although this opinion was in error, as we shall show, infra, its effect was to preclude the BLM State Office from finally approving the amendment application, as both the State Director, BLM, and the Regional Director, NPS, still wished to do.

On April 28, 1977, the State Director forwarded the case record to the BLM Director with a memo stating:

> In accordance with Organic Act Directive No. 77-24 we are forwarding to you the subject case file for review and analysis. This is a case in which the Regional Solicitor's Office refuses, because of a legal technicality, to approve amendment of the patent despite the presence of a good faith error.
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> It is clear from the facts in this case that the patent issued to Charles T. Mantle does not describe the land he intended to enter, actually did enter, occupied, and placed valuable improvements upon. The Solicitor, however, takes the position that because the lands entered and the lands described in the patent were withdrawn at the time of entry (and patent), the amendment cannot be approved, even though the withdrawal has since been revoked.

> The Solicitor goes on to note that the lands are currently unavailable because of the withdrawal for the Dinosaur National Monument, even though the withdrawing agency (the National Park Service) has advised us by memorandum dated December 12, 1974 (see case file) that they have no objection to our processing the application.
>
> We do not believe that after more than 40 years of paying taxes on the land, occupying it in good faith, and placing improvements thereon, a man should be deprived legal title because of this kind of technicality. This appears to us to be a case involving the kind of good faith error which Section 316 of the Federal Land Policy and Management Act of 1976 was designed and to deal with and which falls within the purview of the aforementioned Directive.

After reviewing the case, the Director found himself in agreement, and referred the matter to the Assistant Solicitor, Lands, with a memo, the final paragraph of which reads:

> In this amendment of patent application, the equities and the approval of the National Park Service are all for the applicant. We have a proper case for amendment, and we have the statutory authority to proceed. We ask that you reverse the decision of the Regional Solicitor, Denver, and allow us to proceed to issue a new and correct patent.

In the meanwhile, NPS was becoming increasingly concerned. Since the deed conveying the E 1/2 NW 1/4 of sec. 18 to the United States had been accepted by BLM and recorded, the county had lost 80 acres from its tax rolls, the Mantles continued their unauthorized occupancy of the lands applied for, although they were apparently told they could no longer farm the land. Their holdings were reduced to 80 acres, and their income affected. NPS was in the position of having to defer enforcement of its own regulations regarding trespass,

grazing, and "inholding" regulations and procedures. Therefore, the Regional Director, NPS, wrote to BLM's State Director on February 7, 1979, as follows, in part:

> We realize your State office has done everything within its authority to bring the subject application to a point of decision. Nevertheless, the case is still pending. We recommend that you forward this memorandum, along with comments of your own, to your Washington office in an effort to expedite a decision on this issue. The National Park Service is in favor of allowing this patent amendment and believe the equities are in favor of the Mantles in this case.
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> * * * * * * *
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> We urge your support in obtaining a final decision from the Washington Solicitor's office acknowledging that the application is proper and that corrected patent should issue.

The case had come to the personal attention of the Secretary, and he requested the advice of the Solicitor. This was forthcoming in a memo from the Solicitor to Secretary dated January 29, 1979. In it the Solicitor undertook to review the case record, evaluate the evidence, and form an opinion of the case on its merits. He concluded:

> [E]xcept for Charles Mantle's statement in his application, there is nothing in the record to indicate that a mistake has been made.
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> * * * * * * *
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> * * * Mantle is simply now asking for new lands without real justification. From this perspective, Mantle simply trespassed when he moved a quarter of a mile off the eastern boundary of his patented lands in 1937, built a new dwelling, and began to improve these lands.

The Solicitor's memo also states: "It is also clear to me that the Regional Solicitor is correct. Even assuming Mantle made an honest mistake because Dinosaur National Monument closed the lands Mantle now wants we cannot without legislation, correct that mistake by withdrawing lands from the Monument and making them available to Mantle."

The case file, together with a copy of the memo, was then transmitted back to the Director, BLM, under cover of a transmittal memo by an attorney in the Solicitor's office. There is nothing in the record to show that Secretary Andrus ever made a decision on the case or issued any instructions concerning it. The case was in turn transferred to the State Director, Colorado, by memo from the Acting Associate Director, 2/ instructing the State Director to prepare a decision denying the application to amend the patent.

The Colorado State Office issued its decision rejecting the application on April 11, 1979. The reason given for rejection was as follows:

2/ This memo erroneously states, "Since there has been no acceptance of the conveyance of E 1/2 NW 1/4, sec. 18, T. 6 N., R. 102 W., 6th principal meridian, no reconveyance is required so long as the deed is returned." A handwritten note in the file states, "Warranty Deed returned to Mr. Tim Mantle with decision of April 11, 1979, rejecting application to amend patent. JRB -- 4/11/79." This was incorrect. The record shows that BLM formally accepted the deed by its letter dated July 20, 1976, and returned it to appellant's lawyer with instructions that it be recorded. It was subsequently recorded on October 15, 1976, in Book 417, page 548, presumably in the Deed Records of Moffat County, Colorado.

> While it appears that Charles Mantle may have misdescribed, in his Application, the land he intended to enter and that the present amendment may properly describe his intention, the amendment cannot be approved. The land covered by the present application was withdrawn from entry by Power Site Reserve No. 721 as of June 27, 1919. This withdrawal was construed by Power Site Interpretation No. 120 on June 29, 1928. While the withdrawal was revoked on July 8, 1974, all the land in Sections 17 and 18 were withdrawn for Dinosaur National Monument by the Act of September 8, 1960. Therefore, the land applied for in the subject application cannot be patented to the applicant, because it is neither presently available for entry nor was it available for entry in 1932 when the original patent was issued. Frank H. and Claire E. Stefflre, 3 IBLA 255 (1971).

This appeal followed.

[1] We cannot agree with the finding in the Solicitor's memo that there was no error in the description of the land entered by Charles Mantle, and that he was simply trespassing when he built his new home and made other extensive improvements in the subdivision adjoining that of his previous home place. Such a finding is directly contrary to that made by everyone else who has been concerned with the case, including the BLM realty specialist who examined the land, the Superintendent of the Dinosaur National Monument, the Rocky Mountain Regional Director, NPS, BLM's Colorado State Director, and BLM's Associate Director, all of whom have opined in writing that there was an error, and that Charles Mantle occupied the lands applied for in good faith. The finding of the Solicitor is based on two facts which are recited in Doyle's report of his 1930 examination of the entry and the accompanying affidavit by Charles Mantle. Doyle's report noted that

on the east and south sides of the SE 1/4 NE 1/4 sec. 18 (where most of Mantle's improvements were then sited) there was a half-mile of three wire fence "across the canyons and between the bluffs." In Mantle's affidavit, dated September 18, 1930, he stated, "That I this day pointed out the 1/4 corner between Sections 17 and 18 in this township and range, and the improvements of every kind that I have placed on the lands embraced in this application." Concededly, these two statements, taken together might lead one to conclude, as the Solicitor did, that Charles Mantle knew where the section line was and had fenced it as his boundary. However, other evidence persuades us to the contrary.

The ranch was (and remains) isolated in extremely rugged terrain. There was no road for 12 miles, and access was by foot or horseback. The land was impassible to a wagon. The nearest neighbor was many miles away. Why, then, would Charles Mantle expend the money and extraordinary labor to bring in miles of fence wire on pack horses, cut and set posts in rocky ground, and string fence on two sides of the subdivision where his home, outbuildings, garden, orchard, and much of his cultivation was? (The Doyle report notes that the garden, sweet clover cultivation and alfalfa were also enclosed in three-wire fence.) It surely was not done to keep people out or to delineate his boundaries, as there were no people to be excluded or to take notice of his property lines. Besides, he made no effort to fence any of his other boundaries. His affidavit states he

was running 200 to 300 head of cattle then, and the Doyle report states, "The locality in which this homestead is located is ideal for wintering stock, owing to the shelter found on the side hills which slope to the river." It seems apparent that Charles Mantle's motive in fencing the south and east sides of the SE 1/4 NE 1/4 was to keep cattle away from his home and other improvements.

The fact that he knew where the section line between sections 17 and 18 was does not compel the conclusion that he did not intend to include any section 17 land in his homestead. He had paid a surveyor to describe his land and to "make out the papers for the original homestead." Having entrusted this task to someone he believed to be a professional, it is easy to believe that Mantle blithely assumed that it had been correctly done and never undertook to analyze it himself. Perhaps there was some failure of communication between Mantle and his surveyor as to the land to be included in the description, or perhaps the surveyor was simply incompetent.

Regardless of how the error was made, however, the most compelling reason for believing that it actually occurred is the land itself. One look at Fox's photograph "B" 3/ ought to be sufficient to convince anyone that Charles Mantle could have had no reason to want, or any conceivable use for, the barren, inaccessible, insurmountable

3/ The caption on Exhibit B is mislabelled "W 1/2 NW 1/4, Section 18," rather than "E 1/2 NW 1/4," which reference to the topographic map and the text of the report show it to be.

sandstone cliffs on the opposite side of the river. The topographic map shows the 5,800-foot contour line near the center of the E 1/2 NW 1/4, and a benchmark across the river in the patented S 1/2 NE 1/4 shows an elevation of 5,154 feet -- a difference of 646 feet -- which the photograph shows is achieved in a succession of vertical or near-vertical rises. Also, it will be recalled that Charles Mantle had been farming, ranching, and making his home on these lands for 10 years before filing his homestead application, and he had to be intimately familiar with the terrain and its uses. In May 1919, when he first settled there, all the land had the same status, and it was all equally available to him. To believe that he would deliberately have chosen 80 acres of barren, precipitous cliffs across the river in preference to the two 40-acre subdivisions of useful, relatively flat land immediately adjacent to his home place is to impugn his sanity. Mantle devoted most of his life and near-Herculean effort to the successful establishment of this wilderness homestead. He spent 2 years in building his "new" house on the land in section 17, which was his residence for the next 30 years and remains today the residence of his son's family. In his application for amendment of the patent, Charles Mantle simply stated, "The land I thought I was locating, I have cultivated and built my home upon, is in the valley along the river side. Of course I would not have made the expenditures I have unless I thought I owned the land." We regard this statement as entirely worthy of belief. His sincere, earnest determination in the founding and maintenance of this homestead belies any suggestion that

he would have jeopardized the entire project by investing all this time, money, and labor on land which he knew he did not own, when he could just as easily have built his home on the adjacent patented 80 acres where the original improvements were sited.

We conclude that there was in fact an error made in the description of the land which Charles Mantle occupied and settled on May 1, 1919.

Having established the fact that an error did occur, we turn now to the question of whether this Department is possessed of the authority to afford the relief applied for.

The land was included in a powersite withdrawal on August 2, 1919, subject to valid existing rights. Had Mantle's settlement postdated this withdrawal, it would not have precluded allowance of his homestead entry. When he made his homestead application in 1929, the Commissioner of the General Land Office, on August 2, 1929, wrote to the Chief of the Field Division, noting that the application "appears to be allowable" and directing:

> You will cause investigation to be made and ascertain whether or not the applicant's alleged settlement was made prior to August 2, 1919, the date of the power site withdrawal withdrawing the lands in question and whether or not said settlement claim has been maintained until the present time, and make appropriate report.

The purpose of this directive was not to establish whether or not the homestead would be allowed but, rather, whether it would be allowed subject to section 24 of the Act of June 10, 1920. Doyle's report of his investigation confirmed that Mantle had indeed settled the land in May 1919 and subsequently maintained his settlement. On this basis the Assistant Commissioner wrote to the Register of the Denver Land Office on April 29, 1931, saying:

> The applicant's settlement on and improvement of the land is shown by the record to have commenced in May 1919, prior to the Power Site Withdrawal and the entry will, therefore, be allowed without reservation under section 24 of the Federal Water Power Act.

The reason for fixing Mantle's rights as of the date of his actual settlement of the land rather than as of the date of the allowance of the entry (as the more modern rule provides) is expressed at 48 L.D. 389, 397 (1922), where the Department notes, an entryman "may have credit for residence as well as cultivation before the date of entry if the land was, during the period in question, subject to appropriation by him."

Therefore, if the land with which we are here concerned was actually settled and claimed by Mantle from May 1, 1919, forward, and was merely misdescribed in his subsequent homestead application, neither the powersite withdrawal for the later withdrawal for the expansion of Dinosaur National Monument would have interdicted his right to the land.

Moreover, even assuming that the successive withdrawals did attach to these lands, we cannot agree that the Secretary is barred from conveying them to appellant.

Charles Mantle originally filed his application for the amendment of his patent pursuant to 43 U.S.C. § 697 (1970). However, that act was repealed in 1976 and supplanted by legislation which invested the Secretary with broader authority. Section 316 of Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976). The present application by Mantle Ranch Corporation is being considered pursuant to the 1976 statute. The distinction between the two statutes was analyzed in Roland Oswald, 35 IBLA 79, 86 (1978), where we held:

> Section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq. * * * permits the Secretary to correct errors in any documents of conveyance which have been issued by the Federal Government to dispose of public lands. The provision replaces several repealed acts dealing with mistakes. In particular, former 43 U.S.C. § 697 (1964) allowed the Secretary to amend a patent where entry had erroneously been filed for a tract of land not intended to be entered. The repealed section expressly limited its operation to lands upon which entry could have been made. Thus, under the old law, no amendment would be possible in the present case because the lands intended to be entered had been withdrawn for a Forest Reserve. H. L. Bigler, 11 IBLA 297 (1973); Frank H. Stefflre, 3 IBLA 255, 257 (1971); Henry C. Cleek, A-29257 (March 12, 1963).
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> No such limitation appears in the present section, which reads:
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> Sec. 316. The Secretary may correct patents or documents of conveyance issued pursuant to section 208 of this Act or to other Acts relating to the disposal of public lands where

> necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands.

[Emphasis added.]

Thus, even if Mantle's rights were subject to the effect of the withdrawals, the Secretary could grant relief at his discretion. 4/ Of course, this would properly take into account the desires of the agency administering the withdrawn land. However, in this instance, the National Park Service wholeheartedly supports the conveyance.

Recently, in George Val Snow, 46 IBLA 101, 104 (1980), we observed:

> The statute, supra, provides that the Secretary may correct patents, thereby investing him (and those who are delegated to act for him) with discretion in the matter. Before such discretion can be exercised it must clearly appear than an error was, in fact, made. Otherwise, an application to amend would be barred as a matter of law. Once the fact of error in the patent is established, the other circumstances of the case must be examined to determine whether considerations of equity and justice warrant amendment of the patent.

Clearly, in this case considerations of equity and justice require that relief be afforded by granting the application. Not only

4/ The case of Frank H. Stefflre, 3 IBLA 255 (1971), cited by the Regional Solicitor in support of his opinion that withdrawn land cannot be conveyed to an applicant for patent reform, is inapposite. That case construed the effect of 43 U.S.C. § 697 (1970), since repealed. The case has nothing whatever to do with the power of the Secretary under section 316 of FLPMA.

has the land been occupied and claimed since 1919, the tract in sec. 17 has actually been the site of the family home for more than 40 years and is the place where Tim Mantle, the present occupant, was born. The heirs of Charles Mantle are entitled to what their father and husband actually earned by his compliance with the homestead law. Cf. George Val Snow, supra. No undue prejudice to the public interest will result. Moreover, the written acceptance by BLM of the deed of the E 1/2 NW 1/4 of sec. 18 from appellant to the United States, and the subsequent recordation of that deed at BLM's direction, in contemplation that the patent would be amended, have significant implications in equity.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office, Bureau of Land Management, is reversed and the case is remanded with instructions to amend the patent in accordance with the application.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge